

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Great Seneca Financial Corp.,)	
A Maryland Corporation,)	
Assignee of Madison Street Investments,)	
Assignee of Chase Manhattan Bank)	
)	
Plaintiff,)	C.A. No. 2005-06-493
)	
v.)	
)	
Lifeng Lee Hsu,)	
)	
Defendant.)	

Submitted: June 9, 2006
Decided: June 28, 2006

Neal J. Levitsky, Esquire
Fox Rothschild LLP
Citizens Bank Center
919 N. Market Street, Ste. 1300
P.O. Box 2323
Wilmington, DE 19899-2323
Attorney for Plaintiff

Lifeng Lee Hsu
108 Cardinal Cir.
Hockessin, DE 19707-2044
P.O. Box 778
Pro se Defendant

ORDER DENYING DEFENDANT’S MOTION TO AMEND JUDGMENT

The Court has received and reviewed *pro se* defendant Lifeng Lee Hsu’s (“defendant”) Motion to Amend Judgment from the Court’s May 17, 2006 Order. The points raised by defendant were considered. Defendant argues the Order was premature since this Court previously denied plaintiff Great Seneca Financial Corporation’s (“plaintiff”) Motion for Summary Judgment and defendant’s Cross-Motion for Summary Judgment with the exception of the applicability of the Fair Debt Collection Practices Act

("FDCPA"). Defendant's March 2, 2006 Memorandum to this Court provides, "WHEREFORE, Defendant respectfully requests its Cross-Motion for Summary Judgment be granted." Plaintiff's Memorandum did not ask for entry of Summary Judgment but requested this Court to deny defendant's request. In order for the Court to conduct a meaningful review of defendant's Cross-Motion for Summary Judgment, as he requested, and which the Court entertained even though defendant's Cross-Motion, too, was previously denied, both Motions for Summary Judgment were equally considered after the parties supplemented the record with their Memoranda and defendant's authorized user affidavit.

With the understanding that plaintiff's Motion for Summary Judgment was denied, defendant claims he only addressed the FDCPA issue in his Memorandum. As a result, defendant asserts he was not provided the opportunity to present two additional pieces of evidence. The Court notes defendant has filed numerous pleadings in this matter, and in light of his status as *pro se*, the Court now further substantively considers defendant's instant Motion to Amend Judgment. First, defendant alleges an inconsistency between plaintiff's affidavits, which identify the defendant as the owner of a "Chase Freedom Gold MasterCard," and defendant's affidavit, which identifies defendant's account as a "Shell MasterCard from Chase." Second, defendant offers to the Court a treatise and case law on the FDCPA.

ANALYSIS

Court of Common Pleas Civil Rule 59(d) allows a party to present a Motion to Amend Judgment after judgment has been entered. The rule is generally used to amend damages that do not conform to the relief sought. See *Frampton v. Allstate Ins. Co.*,

2005 WL 1953063 (Del.Super.) (lowering damages to conform with maximum coverage under the insurance policy). See also *In re Kapsalis v. State Farm Mutual Ins. Co.*, 1997 WL 529590 (Del.Super.) (denying motion to add interest to damages awarded). Because defendant does not seek to amend damages, but rather to be heard on two additional points, a Motion to Amend Judgment pursuant to Rule 59(d) is inappropriate at this time.

Although the caption of defendant's Motion is flawed, this Court adheres to a policy of judicial lenience toward *pro se* defendants and will therefore examine defendant's Motion on other grounds under the Court of Common Pleas Civil Rules. *Wright v. Wilmington Trust Co.*, 1993 WL 1626508 (Del.Super.). One option is to treat the defendant's Motion as a Motion for Reargument. Rule 59(e) permits a Motion for Reargument that briefly describes the grounds for reargument if submitted within five days after the filing of the Court's opinion or decision. Although defendant's Motion may substantively meet those criteria, his Motion was filed June 9, 2006, well after the Court's May 17, 2006 hearing. Rule 6(b) specifically prohibits this Court from enlarging this 5-day period of time within which a Motion for Reargument must be served and filed. Therefore, time restrictions expressly prohibit this Court from treating defendant's Motion as a Motion for Reargument.

Alternatively, defendant's Motion may be considered as a Motion for Relief from Judgment or Order, pursuant to Rule 60(b). Rule 60(b) allows a party to seek relief from a judgment or order in the case of mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, or upon any other reason justifying relief. When considering defendant's newly presented evidence, however, defendant's arguments provide insufficient grounds for relief. First, defendant argues that his credit card bill with the

heading “Shell MasterCard from Chase” is substantively different from the previous bills plaintiff supplied via affidavit with the heading “Chase Freedom Gold Card,” and therefore plaintiff’s affidavits are somehow unreliable. This Court finds no basis for such an argument, particularly in light of the fact that defendant’s name, address, account number and balance are identical on both documents. Furthermore, neither document indicates a person, other than defendant, had access to the account. As such, the Shell MasterCard bill is insufficient evidence that defendant was not contractually obligated to plaintiff. Rather, defendant’s evidence only corroborates plaintiff’s assertion that defendant was solely responsible for the debt.

Furthermore, defendant argues that the treatise and case law he recently discovered justify relief from summary judgment. The treatise defendant has attached merely defines a party who purchases a debt after the debt has become delinquent as a “debt collector” under the FDCPA. Defendant fails to understand that 15 U.S.C. § 1692 (i)(b), though awkwardly worded, does not prohibit all legal recourse by debt collectors - it merely restricts such suits to the judicial district in which the real property exists. See *Addison v. Braud*, 105 F.3d 223 (5th Cir.1997). See also *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Schulman*, 1990 WL 116735 (S.D.N.Y.). Therefore, regardless of whether plaintiff is a debt collector, 15 U.S.C. § 1692 (i)(b) does not bar suit against the defendant. As a result, defendant’s additional treatise and case law fail to provide a sufficient basis for relief from judgment.

CONCLUSION

No matter which theory of relief the motion best fits under, defendant’s evidence is insufficient to grant relief. This Court has conducted an exhaustive and thorough

review of the complete record, including defendant's new evidence, interpretation of the Court docket, and recollection of the Court's instructions at Motion hearings. It is to be noted that defendant's interpretation and recollection are both inaccurate. The Court, in reviewing the record before issuing this Order, fairly and diligently considered all evidence presented by both parties, thus providing defendant with "two bites of the apple." As mentioned previously, such is especially the Court's practice when reviewing arguments and pleadings made by a *pro se* party.

ORDER

For the reasons stated herein, defendant's Motion to Amend/be Relieved from Judgment is DENIED.

IT IS SO ORDERED.

Joseph F. Flickinger III
Judge